

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 240 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

BHAGWATIPRASAD P PARIKH

Appearance:

MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 16/04/99

ORAL JUDGEMENT

1. At the instance of Commissioner of Income Tax, Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad has referred the following question of law said to be arising out of its appellate order in Income Tax Application No. 1308/Ahd/82 relating to assessment year

1978-79:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to relief u/s. 80U of the I.T. Act, 1961?"

2. It has been pointed out by the learned counsel for the revenue that in the case of very same assessee for the assessment year 1977-78 like question has been made subject matter of Income Tax Reference No. 119 of 1983 which was decided on 3.11.1988 that the Tribunal has been given benefit under 80U on the ground that he is suffering from coronary heart disease which means a permanent disability, that has substantially affected his capacity to engage himself gainfully. No change in the facts and circumstances of the case have been stated from the facts and circumstances prevailing in assessment years 1977-78. This court has decided the aforesaid Income Tax Reference No. 119 of 1983 found that the Tribunal after taking into consideration all the facts has reached finding about reduction in capacity. It is a question of appreciating and evaluating evidence and does not give rise to question of law.

3. As a result the question was answered in affirmative in favour of the assessee and against the revenue. From the statement of case, we find that in the present case, the Tribunal has merely followed its earlier decision in case of assessee in Income Tax Application/248/Ahd/81 out of which Income Tax Reference No. 119 of 1983 had arisen. In these circumstances, following the decision in Income Tax Reference No. 199 of 1983 we answer question referred to above in affirmative, that is to say, in favour of assessee and against the revenue.

There shall be no order as to costs.

(Rajesh Balia, J) (A.R. Dave, J)